

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

SANDRA FITHIAN,

Plaintiff,

v.

AUTO PLAZA, INC,
WELLS FARGO DEALER
SERVICES,
PROFESSIONAL PROCESS
SERVICES,
JOHN DOE REPO-MAN JEFF,
JOHN DOE REPO-MAN CAREY,

Defendants.

C.A. No. 1:12-cv-02416-RBK-JS

Jury Demand

**WELLS FARGO BANK N.A.'S ANSWER, AFFIRMATIVE DEFENSES,
COUNTERCLAIMS, AND CROSS-CLAIMS**

Wells Fargo Bank, N.A, d/b/a Wells Fargo Dealer Services (“Defendant” or “Wells Fargo”), by and through their undersigned counsel, hereby answer Plaintiff Sandra Fithian’s (“Plaintiff”) complaint as follows:

A. Jurisdiction and Venue

1. The allegations in this paragraph constitute conclusions of law such that no response is required. To the extent a response is required, the allegations are denied.

2. The allegations in this paragraph constitute conclusions of law such that no response is required. To the extent a response is required, the allegations are denied.

B. Parties

3. The allegations in this paragraph are denied because Defendant is, after reasonable investigation, without sufficient information to form a belief as to the truth of the allegations.

4. The allegations in this paragraph are denied because Defendant is, after reasonable investigation, without sufficient information to form a belief as to the truth of the allegations.

5. Defendant admits that Wells Fargo is a corporation licensed to do business in the Commonwealth of Pennsylvania as has conducted business in the State of New Jersey and in Essex County. The remaining allegations of this paragraph constitute conclusions of law such that no response is required. To the extent a response is required, the allegations are denied.

6. The allegations in this paragraph are denied because Defendant is, after reasonable investigation, without sufficient information to form a belief as to the truth of the allegations.

7. The allegations in this paragraph are denied because Defendant is, after reasonable investigation, without sufficient information to form a belief as to the truth of the allegations.

8. The allegations in this paragraph are denied because Defendant is, after reasonable investigation, without sufficient information to form a belief as to the truth of the allegations.

9. The allegations in this paragraph constitute conclusions of law such that no response is required. To the extent a response is required, the allegations are denied because

Defendant is, after reasonable investigation, without sufficient information to form a belief as to the truth of the allegations.

C. Factual Allegations

a) Fraudulent Sale

10. The allegations in this paragraph are denied because Defendant is, after reasonable investigation, without sufficient information to form a belief as to the truth of the allegations.

11. The allegations in this paragraph are denied because Defendant is, after reasonable investigation, without sufficient information to form a belief as to the truth of the allegations.

12. The allegations in this paragraph are denied because Defendant is, after reasonable investigation, without sufficient information to form a belief as to the truth of the allegations.

13. Admitted. By way of further response, Defendant directs the Court to the Buyer's Order and Retail Installment Sales Contract for their full and complete contents. Defendant further notes that the referenced exhibits were not attached to the Complaint.

14. The allegations in this paragraph are denied because Defendant is, after reasonable investigation, without sufficient information to form a belief as to the truth of the allegations.

15. The allegations in this paragraph are denied because Defendant is, after reasonable investigation, without sufficient information to form a belief as to the truth of the allegations.

16. The allegations in this paragraph are denied because Defendant is, after reasonable investigation, without sufficient information to form a belief as to the truth of the allegations.

17. The allegations in this paragraph are denied because Defendant is, after reasonable investigation, without sufficient information to form a belief as to the truth of the allegations. Defendant notes that the referenced exhibits were not attached to the Complaint.

18. The allegations in this paragraph constitute conclusions of law such that no response is required. To the extent a response is required, the allegations are denied.

19. The allegations in this paragraph constitute conclusions of law such that no response is required. To the extent a response is required, the allegations are denied.

20. The allegations in this paragraph constitute conclusions of law such that no response is required. To the extent a response is required, the allegations are denied.

b) Unlawful Repossession

21. The allegations in this paragraph constitute conclusions of law such that no response is required. To the extent a response is required, the allegations are denied.

22. Defendant admits that PPS was retained by Wells Fargo to repossess Plaintiff's vehicle. The remaining allegations in this paragraph are denied because Defendant is, after reasonable investigation, without sufficient information to form a belief as to the truth of the allegations.

23. The allegations in this paragraph are denied because Defendant is, after reasonable investigation, without sufficient information to form a belief as to the truth of the allegations.

24. The allegations in this paragraph are denied because Defendant is, after reasonable investigation, without sufficient information to form a belief as to the truth of the allegations.

25. The allegations in this paragraph are denied because Defendant is, after reasonable investigation, without sufficient information to form a belief as to the truth of the allegations.

26. The allegations in this paragraph are denied because Defendant is, after reasonable investigation, without sufficient information to form a belief as to the truth of the allegations.

27. The allegations in this paragraph are denied because Defendant is, after reasonable investigation, without sufficient information to form a belief as to the truth of the allegations.

28. The allegations in this paragraph are denied because Defendant is, after reasonable investigation, without sufficient information to form a belief as to the truth of the allegations.

29. The allegations in this paragraph are denied because Defendant is, after reasonable investigation, without sufficient information to form a belief as to the truth of the allegations.

30. The allegations in this paragraph are denied because Defendant is, after reasonable investigation, without sufficient information to form a belief as to the truth of the allegations.

31. The allegations in this paragraph constitute conclusions of law such that no response is required. To the extent a response is required, the allegations are denied because

Defendant is, after reasonable investigation, without sufficient information to form a belief as to the truth of the allegations.

32. The allegations in this paragraph are denied because Defendant is, after reasonable investigation, without sufficient information to form a belief as to the truth of the allegations.

33. The allegations in this paragraph are denied because Defendant is, after reasonable investigation, without sufficient information to form a belief as to the truth of the allegations.

34. The allegations in this paragraph are denied because Defendant is, after reasonable investigation, without sufficient information to form a belief as to the truth of the allegations.

35. The allegations in this paragraph are denied because Defendant is, after reasonable investigation, without sufficient information to form a belief as to the truth of the allegations.

36. The allegations in this paragraph are denied because Defendant is, after reasonable investigation, without sufficient information to form a belief as to the truth of the allegations.

37. The allegations in this paragraph are denied because Defendant is, after reasonable investigation, without sufficient information to form a belief as to the truth of the allegations.

38. The allegations in this paragraph are denied because Defendant is, after reasonable investigation, without sufficient information to form a belief as to the truth of the allegations.

39. The allegations in this paragraph are denied because Defendant is, after reasonable investigation, without sufficient information to form a belief as to the truth of the allegations.

40. The allegations in this paragraph are denied because Defendant is, after reasonable investigation, without sufficient information to form a belief as to the truth of the allegations.

41. The allegations in this paragraph are denied because Defendant is, after reasonable investigation, without sufficient information to form a belief as to the truth of the allegations.

42. The allegations in this paragraph constitute conclusions of law such that no response is required. To the extent a response is required, the allegations are denied.

43. The allegations in this paragraph constitute conclusions of law such that no response is required. To the extent a response is required, the allegations are denied.

44. The allegations in this paragraph constitute conclusions of law such that no response is required. To the extent a response is required, the allegations are denied.

c) Additional Allegations

45. The allegations in this paragraph constitute conclusions of law such that no response is required. To the extent a response is required, the allegations are denied.

46. Defendant admits that Plaintiff placed calls to Wells Fargo. The remaining allegations in this paragraph are denied because Defendant is, after reasonable investigation, without sufficient information to form a belief as to the truth of the allegations.

47. Denied.

48. Denied.

49. Denied.

50. The allegations in this paragraph constitute conclusions of law such that no response is required. To the extent a response is required, the allegations are denied.

51. The allegations in this paragraph constitute conclusions of law such that no response is required. To the extent a response is required, the allegations are denied.

52. The allegations in this paragraph constitute conclusions of law such that no response is required. To the extent a response is required, the allegations are denied.

53. The allegations in this paragraph constitute conclusions of law such that no response is required. To the extent a response is required, the allegations are denied.

54. The allegations in this paragraph are denied because Defendant is, after reasonable investigation, without sufficient information to form a belief as to the truth of the allegations. Defendant notes that the referenced exhibit is not attached to the Complaint.

55. The allegations in this paragraph are denied because Defendant is, after reasonable investigation, without sufficient information to form a belief as to the truth of the allegations. Defendant notes that the referenced exhibit is not attached to the Complaint.

56. The allegations in this paragraph are denied because Defendant is, after reasonable investigation, without sufficient information to form a belief as to the truth of the allegations.

57. The allegations in this paragraph are denied because Defendant is, after reasonable investigation, without sufficient information to form a belief as to the truth of the allegations.

58. The allegations in this paragraph constitute conclusions of law such that no response is required. To the extent a response is required, the allegations are denied.

59. The allegations in this paragraph are denied because Defendant is, after reasonable investigation, without sufficient information to form a belief as to the truth of the allegations.

60. The allegations in this paragraph are denied because Defendant is, after reasonable investigation, without sufficient information to form a belief as to the truth of the allegations.

61. The allegations in this paragraph are denied because Defendant is, after reasonable investigation, without sufficient information to form a belief as to the truth of the allegations.

62. The allegations in this paragraph are denied because Defendant is, after reasonable investigation, without sufficient information to form a belief as to the truth of the allegations.

63. The allegations in this paragraph are denied because Defendant is, after reasonable investigation, without sufficient information to form a belief as to the truth of the allegations.

64. No response is required in response to the conclusory statements of this paragraph

65. The allegations in this paragraph are denied because Defendant is, after reasonable investigation, without sufficient information to form a belief as to the truth of the allegations.

66. The allegations in this paragraph constitute conclusions of law such that no response is required. To the extent a response is required, the allegations are denied.

67. The allegations in this paragraph constitute conclusions of law such that no response is required. To the extent a response is required, the allegations are denied because

Defendant is, after reasonable investigation, without sufficient information to form a belief as to the truth of the allegations.

68. The allegations in this paragraph are denied because Defendant is, after reasonable investigation, without sufficient information to form a belief as to the truth of the allegations.

69. Defendant admits that Wells Fargo extends credit to consumers. The remaining allegations of the paragraph are denied.

70. The allegations in this paragraph are denied because Defendant is, after reasonable investigation, without sufficient information to form a belief as to the truth of the allegations.

71. Denied.

72. The allegations in this paragraph constitute conclusions of law such that no response is required. To the extent a response is required, the allegations are denied.

73. The allegations in this paragraph constitute conclusions of law such that no response is required. To the extent a response is required, the allegations are denied.

74. Denied.

75. The allegations in this paragraph constitute conclusions of law such that no response is required. To the extent a response is required, the allegations are denied.

76. The allegations in this paragraph constitute conclusions of law such that no response is required. To the extent a response is required, the allegations are denied.

77. The allegations in this paragraph constitute conclusions of law such that no response is required. To the extent a response is required, the allegations are denied.

D. Causes of Action

COUNT I - FRAUD
(Plaintiff v. AUTO PLAZA & WFDS)

78. No response is required for this incorporating paragraph.

79. The allegations in this paragraph constitute conclusions of law such that no response is required. To the extent a response is required, the allegations are denied.

80. The allegations in this paragraph are denied because Defendant is, after reasonable investigation, without sufficient information to form a belief as to the truth of the allegations.

81. The allegations in this paragraph are denied because Defendant is, after reasonable investigation, without sufficient information to form a belief as to the truth of the allegations.

82. The allegations in this paragraph constitute conclusions of law such that no response is required. To the extent a response is required, the allegations are denied.

83. The allegations in this paragraph are denied because Defendant is, after reasonable investigation, without sufficient information to form a belief as to the truth of the allegations.

84. The allegations in this paragraph constitute conclusions of law such that no response is required. To the extent a response is required, the allegations are denied.

85. The allegations in this paragraph constitute conclusions of law such that no response is required. To the extent a response is required, the allegations are denied.

86. The allegations in this paragraph constitute conclusions of law such that no response is required. To the extent a response is required, the allegations are denied.

COUNT II - CONSUMER FRAUD ACT
(Plaintiff v. AUTO PLAZA & WFDS)

87. No response is required for this incorporating paragraph.

88. The allegations in this paragraph constitute conclusions of law such that no response is required. The allegations in this paragraph are denied.

89. The allegations in this paragraph constitute conclusions of law such that no response is required. The allegations in this paragraph are denied because Defendant is, after reasonable investigation, without sufficient information to form a belief as to the truth of the allegations.

90. The allegations in this paragraph constitute conclusions of law such that no response is required. The allegations in this paragraph are denied.

91. The allegations in this paragraph constitute conclusions of law such that no response is required. The allegations in this paragraph are denied because Defendant is, after reasonable investigation, without sufficient information to form a belief as to the truth of the allegations.

92. The allegations in this paragraph constitute conclusions of law such that no response is required. The allegations in this paragraph are denied because Defendant is, after reasonable investigation, without sufficient information to form a belief as to the truth of the allegations.

93. The allegations in this paragraph constitute conclusions of law such that no response is required. The allegations in this paragraph are denied.

94. The allegations in this paragraph constitute conclusions of law such that no response is required. The allegations in this paragraph are denied.

COUNT III - VIOLATIONS OF THE FDCPA
(Plaintiff v. PPS, REPO-MAN JEFF & REPO-MAN CAREY)

95. No response is required for this incorporating paragraph.

96. The allegations in this count are not brought against Wells Fargo and therefore no response is required.

97. The allegations in this count are not brought against Wells Fargo and therefore no response is required.

COUNT IV - VIOLATIONS OF THE U.C.C.
(Plaintiff v. WFDS, PPS, REPO-MAN JEFF & REPO-MAN CAREY)

98. No response is required for this incorporating paragraph.

99. The allegations in this paragraph constitute conclusions of law such that no response is required. The allegations in this paragraph are denied.

100. The allegations in this paragraph constitute conclusions of law such that no response is required. The allegations in this paragraph are denied.

101. The allegations in this paragraph constitute conclusions of law such that no response is required. The allegations in this paragraph are denied.

102. Denied.

103. The allegations in this paragraph constitute conclusions of law such that no response is required. The allegations in this paragraph are denied.

COUNT V - NEGLIGENCE
(Plaintiff v. WFDS, PPS, REPO-MAN JEFF & REPO-MAN CAREY)

104. No response is required for this incorporating paragraph.

105. No response is required for the conclusory, non-factual allegations of this paragraph.

106. The allegations in this paragraph constitute conclusions of law such that no response is required. The allegations in this paragraph are denied.

107. The allegations in this paragraph constitute conclusions of law such that no response is required. The allegations in this paragraph are denied.

108. The allegations in this paragraph constitute conclusions of law such that no response is required. The allegations in this paragraph are denied.

109. The allegations in this paragraph constitute conclusions of law such that no response is required. The allegations in this paragraph are denied.

110. The allegations in this paragraph constitute conclusions of law such that no response is required. The allegations in this paragraph are denied.

111. Denied.

112. Denied.

113. The allegations in this paragraph are denied because Defendant is, after reasonable investigation, without sufficient information to form a belief as to the truth of the allegations.

114. The allegations in this paragraph constitute conclusions of law such that no response is required. The allegations in this paragraph are denied.

115. The allegations in this paragraph constitute conclusions of law such that no response is required. The allegations in this paragraph are denied.

116. The allegations in this paragraph constitute conclusions of law such that no response is required. The allegations in this paragraph are denied.

117. The allegations in this paragraph constitute conclusions of law such that no response is required. The allegations in this paragraph are denied.

COUNT VI - TRESPASS
(Plaintiff v. WFDS, PPS, REPO-MAN JEFF & REPO-MAN CAREY)

118. No response is required for this incorporating paragraph.

119. The allegations in this paragraph constitute conclusions of law such that no response is required. The allegations in this paragraph are denied.

120. The allegations in this paragraph are denied because Defendant is, after reasonable investigation, without sufficient information to form a belief as to the truth of the allegations.

121. The allegations in this paragraph are denied because Defendant is, after reasonable investigation, without sufficient information to form a belief as to the truth of the allegations.

122. The allegations in this paragraph constitute conclusions of law such that no response is required. The allegations in this paragraph are denied.

123. The allegations in this paragraph constitute conclusions of law such that no response is required. The allegations in this paragraph are denied.

124.

WHEREFORE, Defendant requests Plaintiff's Complaint be dismissed WITH PREJUDICE.

AFFIRMATIVE DEFENSES

First Affirmative Defense

The Complaint fails to state a cause of action upon which relief can be granted.

Second Affirmative Defense

Plaintiff has not suffered actual harm or damages as a result of Defendants' actions.

Third Affirmative Defense

Plaintiff has failed to mitigate damages, if any.

Fourth Affirmative Defense

Plaintiff's claims are barred in whole or in part by the doctrine of unclean hands.

Fifth Affirmative Defense

Plaintiff's claims are barred in whole or in part by the doctrine of laches.

Sixth Affirmative Defense

Plaintiff's claims are barred by the terms of the applicable agreements and documents between the parties.

Seventh Affirmative Defense

Plaintiff's claims are barred by immunity and justification.

Eighth Affirmative Defense

Defendants Auto Plaza, Inc. and Professional Process Services do not maintain an agency relationship with Defendant Wells Fargo and/or their acts were outside the scope of any agency relationship.

Ninth Affirmative Defense

Any injury or damages to Plaintiff was caused by third-parties and not by Defendant.

Reservation of Rights

Defendant preserves herein any and all other defenses it may have and reserves the right to assert such additional defenses that it may deem necessary to its defense upon the completion of discovery.

COUNTERCLAIM

(Against Plaintiff, Counterclaim Defendant Sandra Fithian)

125. On April 23, 2007, Sandra Fithian executed and delivered a retail installment contract (the "Contract") in connection with the purchase of a 2003 Mitsubishi Diamante.

126. The Contract is in the original principal sum of \$13,000.00 bears interest at the rate set forth therein.

127. Defendant acquired the rights to the Contract from Wachovia Dealer Services, a division of Wells Fargo Bank, N.A.

128. Plaintiff has failed to make all payments under the Contract when due in that Plaintiff has failed to make all payments due, since at least September 2008.

129. As a result, the entire balance of the Contract is now due and payable with all interest, costs, fees and other charges set forth under the Contract.

130. Defendant gave Plaintiff notice of the default in payment.

131. Despite demand, Plaintiff has failed to pay the balance due under the Contract.

WHEREFORE, Defendant, Counterclaim and Cross-Claim Plaintiff Wells Fargo Bank, N.A. request that this Court enter judgment in favor of Defendant and against the Plaintiff for the balance due under the Contract including all interest, costs, fees and other charges set forth under the Note and award such other relief as the Court deems appropriate.

CROSS-CLAIMS

132. Wells Fargo denies liability to the Plaintiff, but should liability be found, Wells Fargo requests an apportionment of liability among the defendants and proportional contribution.

133. Wells Fargo denies liability to the Plaintiff, but should such liability be found, Wells Fargo is entitled to law indemnification from the defendants.

WHEREFORE, Defendant, Counterclaim and Cross-Claim Plaintiff Wells Fargo Bank N.A. requests that this Court enter judgment in favor of Defendant, Counterclaim and Cross-Claim Plaintiff Wells Fargo Bank, N.A. and against Defendants Auto Plaza, Inc. and Professional Process Services for apportionment of liability among the defendants and proportional contribution, indemnification, including damages to be calculated at trial and attorneys' fees.

Respectfully submitted,

/s/ Mark Pfeiffer

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Attorneys for Defendant, Counterclaim and
Cross-Claim Plaintiff Wells Fargo Bank,
N.A.

Dated: June 4, 2012